**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**
**APPEAL NO.1208 OF 1998**
**IN**
**SUIT NO.902 OF 1984**

The Sangli Bank Ltd.
a Banking Company registered
under the Companies Act, having its
registered office at Rajwada Chowk,
Sangli and Branch Office at Fort,
Bombay. ..Appellants
(Orig.Plaintiffs)

V/s.

1. Messrs. Impex Overseas & Ors.
   a partnership firm carrying on
   business at 503, Navhivan,
   125/127 Kazi Sayed Street,
   Bombay 400 003.

2. Atulkumar Premchand Shah

3. Sanata Premchand Shah
   Both residing at 117/4
   Kamalshree Building,
   Scheme No.6, Road No.24-A,
   Sion (W), Bombay-400 022.

4. Jayalaxmi Chhabildas Kamdar
   residing at 21, Lambra Bhavan,
   215, Balchandra Road, Matunga,
   Bombay-400 019. ..Respondents.

Mr.Mahajan i/b Divekar & Co. for the Appellants.

None for the Respondents.

**CORAM: D.K.DESHMUKH &**
**J.H. BHATIA, JJ.**
**RESERVED ON: 3rd July, 2007.**
**PRONOUNCED ON: 18th July, 2007.**

**JUDGMENT: (Per J.H.Bhatia, J.)**

1. This appeal is directed against the dismissal of suit by the learned Single Judge as per the judgment dated 29th July, 1998.

2. Admitted facts are that the plaintiff/appellant is a bank and the defendant/respondent no.1 is a partnership firm. On the request of the respondent no.1 made on 13th March, 1981, the plaintiff/bank had opened letter of credit on 17th March, 1981 in favour of Taiwan Synthetic Rubber Corporation for the sum of US $ 49,665/-, on account of the defendant no.1. The payment of amount was made to the beneficiary, i.e., Taiwan Synthetic Rubber Corporation by M/s. Irving Trust Company on 18th April, 1981 against the three bills dated 8th May, 1981. The plaintiff/bank advised defendants to retire the bills but they failed to do so. The goods were lying in the Customs Bonded Warehouse. According to plaintiff, due to failure to pay certain charges for clearance of goods, storage, etc., goods were notified for being auctioned on 28th December, 1981. On request by the defendants, the plaintiff/bank made payment of an amount of Rs.5,76,616.95 and got the goods cleared and stored the same in the godown of M/s.

National Transport Company. Plaintiff contended that on 29th December, 1991, an amount of Rs.11,03,038/- against the security of 43 cases of cleared goods was due from the defendants. From January to 30th July, 1982, the defendants took delivery of 41 cases and made payments in instalments. An amount of Rs.1,57,924.45 was still due from the defendants. The defendants wanted to take delivery of the remaining goods by issuing postdated cheques, which was not acceptable to the plaintiff-bank and, therefore, the postdated cheques were returned to the defendants. In these circumstances, the plaintiff filed suit for recovery of Rs.1,91,185.35 with interest at the rate of 20% per annum from the date of suit till payment on the amount of Rs.1,84,026/-.

3. The suit was contested by the defendants contending that nothing was due to be paid and the whole of the amount based on the advance of Rs.4,11,820/- equivalent to US $ 49,665/- was fully paid up. According to the defendants, the main dispute was pertaining to the interest at the rate of 20% per annum compounded quarterly. According to the defendants, there was no such agreement about the interest and to compound the same. It is contended that the plaintiff/bank had actually recovered more than what was due to it. According to the defendants, they had

requested bank to give delivery of last two cases against the post-dated cheques but due to failure of the bank to give delivery, the third party purchaser of goods, who had issued the pay order was constrained to withhold the payment for the same. As such nothing was due and the suit was liable to be dismissed. Several issues were framed on behalf of the defendants. One witness was examined by the plaintiff. Certain documents were placed on record. After discussion of the evidence at length, the learned Single Judge came to conclusion that the plaintiff had failed to prove that the defendants were due to pay the claim amount. The learned Single Judge found that there was no document to prove any contract about payment of interest at the rate of 20% and particularly to compound the same quarterly and also that there was no document to prove any agreement about charging and compounding of the penal interest. With these findings the suit claims to be dismissed.

4. Heard Mr.Mahajan the learned counsel for the appellants. None for the Respondents.

5. Admittedly, the plaintiff had made payment of US $ 49,665/- on behalf of the defendants against the letter of credit opened in favour of Taiwan Synthetic

Rubber Corporation from whom the defendants had imported goods. There is no dispute that three bills dated 8th May, 1981 were required to be retired and for quite sometime, the defendants did not retire them. The record reveals that the statement of account, Exhibit G collectively, indicated that the defendants had actually paid amount of Rs.10,87,171.91 and besides that, the bank had also realised an amount of Rs.54,540/- by way of sale of the last two consignments or cases. Thus, the bank had received an amount of Rs.11,41,171.91. According to the bank on 29th December, 1981, the defendant no.1 had acknowledged the liability to the tune of Rs.11,03,038/-. However, the record reveals that the bank had received much more than the amount of liability, which was allegedly acknowledged by the defendant no.1 . The learned Single Judge noted that the bank has not proved cost, charges and expenses but the bank had debited the same from the sale proceeds of the last two consignments. It indicates that the bank had actually recovered not only principal amount of US $ 49,665/- or its rupee equivalent, being Rs.4,11,820/-, but had also recovered much more than the same because the total amount recovered by it was Rs.11,41,171.91. Even if the payment of demurrages, BPT dues and other charges aggregating to Rs.5,76.616.95 as stated in the plaint, are also taken into account, still the amount

recovered was more than that. In view of this, there is substance in the contention of the defendants that the whole dispute is about interest at the rate of 20% and compounding of the same quarterly.

6. Record reveals that no document was produced to prove agreement about the rate of interest and to compound the same from time to time. No document was produced to prove any agreement to charge penal rate of interest. In absence of any such evidence, the plaintiff could not prove its claim.

7. In view of the facts and the evidence on record, we find that the learned Single Judge was right in dismissing the claim of the plaintiff.

8. In the result, appeal stands dismissed with costs.

**(D.K.Deshmukh, J.)**

**(J.H.Bhatia, J.)**